In the Supreme Court of the United States.

OCTOBER TERM, 1897.

H. C. BERRY *v.* A. B. WHITE, COLLECTOR OF internal revenue, et al.	In equity. No. 539.
WILLIAM BUTLER *v.* SAME.	No. 540.
J. G. RUCKMAN *v.* SAME.	No. 541.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

BRIEF OF APPELLANTS.

STATEMENT.

These are suits in equity to enjoin assignments and revocations of assignment of storekeepers and gaugers in the Internal-Revenue Service of the Government.

At the time of filing the bills the defendant A. B. White was collector of internal revenue for the collection district of West Virginia, and still holds said office. The plaintiffs were all officers of the United States in the Internal-Revenue Service and under assignment of duty at the Hannis distillery at Martinsburg, W. Va. J. G. Ruckman was day storekeeper, William Butler was additional storekeeper, and H. C. Berry was gauger. The defendants Hault, Sutton, Staubly, and Thayer were officers in the Internal-Revenue Service before the institution of these suits, the said Hault and Thayer as gaugers and the said Sutton and Staubly as storekeepers, and all subject to assignment to duty by the Commissioner of Internal Revenue. These facts appear from the bill and answer, and are not disputed.

On the 30th day of September, 1897, the Commissioner of Internal Revenue—at that time the Hon. W. S. Forman—who is the officer authorized by law to assign storekeepers and gaugers to duty and to revoke such assignments, telegraphed and wrote to the defendant John D. Sutton, notifying him that he was assigned for day service to Hannis Distillery Company, vice Ruckman, assigned for additional service, to be effective on the following morning—that is, on the morning of October 1. And by letter, dated September 30, 1897, the Commissioner notified plaintiff Ruckman that he was assigned as additional storekeeper at said distillery, to take effect October 1, 1897. (See Ruckman record, 21 and 22.) It will be observed that this was a revocation of the assignment of said Ruckman as day storekeeper and an assignment

of him to the position of additional storekeeper, and that his compensation remained the same, to wit, $4 per day for the time actually employed.

On the 30th day of September, 1897, the Commissioner notified plaintiff Berry by telegram that he was relieved from duty as gauger at said distillery, and directing him to turn over all Government property in his possession to defendant Franklin T. Thayer, who had been directed to relieve said Berry from duty on the 1st of October, 1897; and on the 2d of October, 1897, the Commissioner suspended said Berry from duty as a gauger. (See Berry record, 23 and 24.)

On the 30th day of September, 1897, the Commissioner, by telegram, notified the plaintiff, William Butler, that his assignment as additional storekeeper at said distillery was thereby revoked, said revocation to be effective at the close of business on that day. And on the 30th day of September, 1897, the defendant, A. B. White, was notified by the Commissioner of the foregoing changes in assignment of storekeepers and gaugers within his collection district. (See Ruckman record, 22 and 23.)

The defendants were not dismissed from the service. Ruckman was relieved from assignment and reassigned, Berry was relieved from assignment, and Butler was relieved from assignment September 30 and suspended October 2. The defendants all remained officers and subject to reassignment by the Commissioner of Internal Revenue.

The bills in these cases were filed in the circuit court of the United States on the 1st day of October, 1897.

They set out the official positions of the plaintiffs, and their assignment to duty, and the official position of the defendant, A. B. White, collector. They allege that the plaintiffs are competent; that they desire to continue undisturbed in their several assignments; that they are Democrats and the collector is a Republican; that the collector is about to remove them from their several offices and place in their stead the other defendants, for no other reason than that the plaintiffs are Democrats and the collector and the other defendants Republicans; that to do this would be a violation of the civil-service law and the rules and regulations thereunder; and pray for an injunction restraining and inhibiting "the said A. B. White, collector, as aforesaid, and all others by and through him, from removing" plaintiffs from their positions "until a vacancy is created by law, and from recommending, assigning, and appointing any person to the same position, and from proceeding in the attempt to make such removal, and in any other manner interfering with" complainants; and for general relief. (See Ruckman record, 4.)

The answers admit that the plaintiffs are officers in the Internal-Revenue Service, and that before the 1st of October, 1897, they were assigned to duty at said distillery, as set out in the bills. The answers aver that the collector does not have power to remove the defendants from the service or to revoke their assignments, and has not assumed to exercise such power; that the Secretary of the Treasury alone has the power to appoint and remove complainants, and the Commissioner alone has the power to revoke their assignments; that complainants

had not been removed from the service, and that no attempt had been made so to remove them; that the assignments and revocations of assignment complained of were made by the Commissioner of Internal Revenue, and that neither the said assignments or revocations nor the recommendation of the collector to the Commissioner relative thereto were made for political or religious reasons, but for the good of the service; that the said Commissioner was a Democrat; that the defendants Hault, Sutton, Staubly, and Thayer had been duly and lawfully appointed by the Secretary of the Treasury and had qualified as officers in the revenue service long before these suits were instituted, and that they are competent to perform the duties to which they were assigned; that the civil-service law had not been violated, and that no attempt to violate said law had been made by either the Commissioner or the collector. (See Ruckman record, 11–16.) In the case of Berry his efficiency is denied, and it is alleged that he is a "careless and indifferent officer." (See Berry record, page 12, sec. 4.)

There is in each record a restraining order dated the 29th day of September, 1897; but as the bills were not sworn to until the 30th of September and were filed in open court on October 1, we take it that these orders may be disregarded. (See Ruckman record, 6.)

A restraining order was entered in each case October 1, enjoining the defendant A. B. White, collector—

> From recommending, appointing, or assisting in the appointment of A. L. Hault, John D. Sutton, Anthony Staubly, and Frank T. Thayer, or any other person to said position, and from removing the

said complainant ——— ———, as aforesaid, until a vacancy therein is created by law, and from assigning and appointing any person to the same position, and from proceeding in the attempt to make such removal and in any other manner interfere with the said complainant ——— ——— in the said office, as aforesaid,

It is further ordered, adjudged, and decreed that A. L. Hault, John D. Sutton, Anthony Staubly, and Frank T. Thayer, and all other persons be, and they are hereby, enjoined and prohibited from acting as storekeeper [or gauger] in the place and stead of the said complainant as aforesaid, or in discharging any of the duties of said office until the further order of this court. (See Ruckman record, 10.)

On November 8 the court entered orders perpetuating the injunctions as follows:

Restraining and inhibiting the defendant, A. B. White, the collector of this district, the appointing power, and the defendant ——— ———, and all others from in anywise interfering with the plaintiff ——— ——— in the possession of his office as ——— and in the discharge of his duties as such ——— at the Hannis distillery, located in the town of Martinsburg, W. Va., until he shall be removed by proper proceedings under the civil-service law and the rules and regulations made in pursuance thereof, or by judicial proceedings at law. (See Ruckman record, 55.)

POINTS AND ARGUMENTS.

These cases involve the construction of the act of Congress of January 16, 1883, known as the civil-service act and the executive rules and regulations made in pursuance thereof, with special reference to the power of the

courts, at the suit of a removed officer, to control the exercise of executive discretion in making appointments and removals, and the additional question whether the revocation of assignment to duty of storekeepers and gaugers in the internal-revenue service is within the operation of the act.

It is respectfully submitted that the honorable circuit court had no jurisdiction to entertain the bill and grant the relief prayed for. In *ex parte Sawyer* (124 U. S., 200), Mr. Justice Gray, delivering the opinion of the court, says:

> It is equally well settled that a court of equity has no jurisdiction over the appointment and removal of public officers, whether the power of removal is vested, as well as that of appointment, in executive or administrative boards or officers, or is entrusted to a judicial tribunal. The jurisdiction to determine the title to a public office belongs exclusively to the courts of law and is exercised either by certiorari, error, or appeal, or by mandamus, prohibition, quo warranto, or information in the nature of a writ of quo warranto, according to the circumstances of the case, and the mode of procedure established by common law or by statute.
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> No English case has been found of a bill for an injunction to restrain the appointment or removal of a municipal officer. But an information in the court of chancery for the regulation of Harrow School within its undoubted jurisdiction over public charities was dismissed so far as it sought a removal of governors unlawfully elected, Sir William Grant saying, "This court, I apprehend, has no jurisdiction with regard either to the election or amotion of corporators of any description" (citing there *Attorney-General* v. *Clarendon*, 17 Ves. Jr., 491, 498).

> In the courts of the several States the power of a court of equity to restrain by injunction the removal of a municipal officer has been denied in many well-considered cases.

The court cites decisions of the courts of New York, Pennsylvania, Iowa, Illinois, and other States to the same effect in the Sawyer case, and then cites with approval the following language from Kerr on Injunctions:

> It is elementary law that the subject-matter of the jurisdiction of a court of chancery is civil property. The court is conversant only with questions of property and the maintenance of civil rights. Injury to property, whether actual or prospective, is the foundation on which the jurisdiction rests. The court has no jurisdiction in matters merely criminal or merely moral which do not affect any right to property, nor do matters of a political nature come within the jurisdiction of a court of chancery. Nor has the court of chancery jurisdiction to interfere with the duties of any department of government, except under special circumstances and when necessary for the protection of rights of property.

And also:

> The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of the rights of property. It has no jurisdiction over the prosecution, the punishment, or the pardon of crimes or misdemeanors, or over the appointment and removal of public officers.

It is worthy of note that in the entire history of this Government no single case is to be found where an appointment to or a removal from an appointive office under the executive branch of the Government has been

enjoined, although many persons have been removed from office against their will. And during the fifteen years since the enactment of the civil-service law no case can be found where the jurisdiction contended for in these cases has been upheld, except within the last year in the district of West Virginia. It is not contended that the plaintiffs held their positions as storekeepers and guager, much less their particular assignment to duty at a given time and a particular distillery, by any tenure. It is submitted that there is no property right in or title to any office unless held by a fixed and definite tenure.

That there is no title to an appointive office under the Government or vested right thereto is fully set out in the case of *Parsons* v. *The United States* (167 U. S., 324.) That was a case where the district attorney for the northern district of Alabama was removed from office by President Cleveland in 1893; and, notwithstanding the fact that the commission of the district attorney provided "that he should hold said office, with all the powers, privileges, and emoluments to the same of right pertaining unto him, the said ——— ———, for the term of four years from the date hereof, subject to the conditions prescribed by law," and that the statute provides that "district attorneys shall be appointed for the term of four years," it was held that a district attorney has no such title to his office or vested property right therein that he could recover the salary for the unexpired term.

If any tenure exists in the inferior appointive offices of the Government, it would seem to be a life tenure; and certainly if it had been the intention of the Congress to establish such tenure by the civil-service law it would

have been specifically provided in the act. No such far-reaching consequence would have been left to inference.

It is well settled that the power of appointment carries with it the power of removal. (*Hennen's Case*, 13 Pet., 230.) It was constantly denied in the discussion in Congress which led to the passage of the civil-service act that that act took away from the executive department of the Government either the power of appointment or the power of removal. (See Congressional Record, vol. 13, part 1, and vol. 14, part 1.) The Constitution, Article II, section 2, provides that "the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments."

In the discussion of the act it was constantly recognized that Congress had not the power to vest the appointment of inferior officers in a commission, or otherwise than as provided in the Constitution.

As to the power of appointment, it was claimed that limiting the power of selection to such persons as were certified to the President and heads of departments by a commission did not limit the power conferred upon the executive department of the Government by the Constitution, though that position was vigorously denied by many able constitutional lawyers in both branches of Congress. Throughout the discussion it was conceded that the power of removal was constitutional, and could not be limited or taken away by act of Congress; and it was universally conceded that it was not the object of the bill to interfere in the slightest degree with the power of removal of inferior officers.

Mr. Pendleton, who introduced the bill, in his first and principal speech, advocating and explaining his measure to the Senate, on page 81, volume 13, part 1, of the Congressional Record, says:

> "The framers of the bill provoke no conflict with the constitutional power of removal from office. They avoid the delicate and difficult question of the duration of official terms. * * * They wisely thought that if every future vacancy should be filled by the appointment of the one man, in fact, the best fitted to discharge the duties, all other questions would soon settle themselves; that if no amount of pressure or patronage, however great, could avail to put a favorite into a vacancy, little wrongful pressure or patronage would be used to make a vacancy.

Again he says, page 82, in the same volume of the record:

> I have sufficiently indicated the constitutional difficulty which may arise and the wisdom of avoiding it. * * * Removals are rarely asked for under the spoils system except to make a vacancy for a particular man. If another man is to be put in, especially if the other man be the favorite of nobody, be recommended by nobody, be the partisan servitor of no person and no party, if he be simply the most capable and fit man for the place, demands for removal will be made only for cause, and then the demand should be heeded. Under the merit system of appointment the question of removal will be solved without legislation.

And again, on the same page, Mr. Pendleton says:

> Many very ardent friends of civil-service reform are opposed to what they call the establishment of

> an official class among the people. They advocate a fixed term for all officers. * * * For the present, without expressing any opinion or committing its supporters in any degree, this bill leaves the subject untouched.

This position was recognized by Bradley, judge, in the case of *Gaddis* v. ——— (Thirteenth Report of U. S. Civil Service Commission, p. 49), where it is said:

> Although apparently it has become a difficult thing to get into the civil service, yet it is just as easy to get out as it was before the enactment of the law. To the extent that the spoils system has been abolished by the civil-service law, it is a great benefit to the civil service. To the extent, however, that Congress failed to provide for the tenure of office of appointees under the civil-service law, it appears to me that the purposes of the act are clearly abortive. Whatever may be my opinion as to the competency of the relator to fill the position that he occupied, or my opinion as to the insufficiency, inadequacy, impropriety, and lack of public policy of the reasons that were given for his removal, it is perfectly clear to me that this court is without authority to interfere in this case.

The courts can not intervene by injunction or otherwise to control executive discretion in appointments to office and removals from office. It was claimed by counsel in the argument in this case, and by the learned judge who delivered the opinion, that this proceeding did not undertake to control executive discretion. Yet the restraining order enjoins the collector from even making the recommendations to his superior officers in the Treasury Department, which he is required by law to

make, and the order perpetuating the injunction restrains and inhibits "the defendant White, the collector of this district, the appointing power, and the defendant and all others from in any wise interfering with the plaintiff in the possession of his office and in the discharge of his duty at the Hannis distillery, located in the town of Martinsburg, West Virginia, until he shall be removed therefrom by proper proceedings had under the civil-service act and the rules and regulations made thereunder, or by judicial proceedings at law."

Under the law the Secretary of the Treasury appoints storekeepers and gaugers, and the Commissioner of Internal Revenue assigns them to particular duties. The language of the order perpetuating the injunction, therefore, is a direct attempt to control the Secretary of the Treasury in the exercise of his discretion in appointment to and removal from office, and is broad enough to prevent the Commissioner of Internal Revenue from exercising the discretion with which he is charged by law in assigning storekeepers and gaugers to duty, and in revoking such assignments. The result of such a ruling is to deprive the President and his Cabinet officers of power to control the course of business in the Executive Departments of the Government.

Congress, while undertaking by the civil-service law to limit the power of appointment to the classified service to an eligible list to be certified by the Civil Service Commission wisely left the power of removal untrammeled, so that the executive department of the Government, charged with the responsibility of the acts of its subordinate officers, could immediately at will relieve

the public service from embarrassments and danger on account of an incompetent, dishonest, or insubordinate official.

But if the ruling contended for in these cases should be upheld, then no matter how incompetent or even dishonest any official might be whose office is within the classified civil service, the President or the proper head of a department could not secure his removal except after a long litigation in the courts, pending which, if the incompetent or dishonest official chose to resort to a proceeding similar to the present cases, he must be left, no matter how great the danger to the public service, in the undisturbed possession of the office, or the President and heads of departments must be in contempt of the court. The result will be serious detriment to the public service, and frequent collisions between the Executive and Judicial Departments of the Government.

In *State of Mississippi* v. *Andrew Johnson* (4 Wallace, 475) Mr. Chief Justice Chase, delivering the opinion of the court, says:

> The Congress is the Legislative Department of the Government; the President is the Executive Department. Neither can be restrained in its action by the judicial department; though the acts of both, when performed, are in proper cases subject to its cognizance.

In the case of the United States ex rel. *Boynton* v. *Blaine*, Secretary of State (139 U. S., 306 to 326), Mr. Chief Justice Fuller, delivering the opinion of the court, says:

> The writ of mandamus can not issue in a case where its effect is to direct or control the head of

an executive department in the discharge of an executive duty involving the exercise of judgment or discretion. (See also *United States* v. *Windom*, 137 U. S., 636 to 644.)

The rule above laid down has not been limited to the President and heads of departments.

In the case of *United States* v. *Seaman* (58 U. S., 225 to 231) it is said:

> The power of the circuit court of this district to issue writs of mandamus to an officer of the Government in Washington has frequently been the subject of discussion in this court. It was before the court in *Kendall* v. *United States*, 12 Peters, 524; in *Decatur* v. *Paulding*, 14 Peters, 497; in *Brashear* v. *Mason*, 6 Howard, 92; and again in *Goodrich* v. *Guthrie*, at the present term. The rule to be gathered from all of these cases is too well settled to need further discussion. It can not issue in a case wherein discretion and judgment are to be exercised by the officer, and it can be granted only where the act required to be done is merely ministerial, and the relator without any other adequate remedy. (See also *Cox, Secretary of the Interior* v. *McGarahan*, 76 U. S., 298.)

While the bills in these cases allege that the collector is about to remove the plaintiffs from their positions, the statutes relative to the appointments and assignments of storekeepers and gaugers in the internal-revenue service show that the collector is not vested by law with such power, but that the Secretary of the Treasury alone has the power to appoint such officers and the Commissioner of Internal Revenue alone has power to assign them to duty. Section 3153 of the Revised Statutes provides

that "There shall be appointed by the Secretary of the Treasury such number of internal-revenue storekeepers as may be necessary, who shall each receive such compensation, not exceeding $4 per day, to be paid monthly by the United States, as may be determined by the Commissioner of Internal Revenue." Section 3156 of the Revised Statutes provides that "The Secretary of the Treasury shall appoint in every collection district where they may be necessary one or more internal-revenue gaugers," etc.

The Revised Statutes also provide that one or more storekeepers shall be assigned by the Commissioner of Internal Revenue to every bonded or distillery warehouse established by law; that any storekeeper may be transferred by the Commissioner of Internal Revenue from one warehouse to another; that the Commissioner may also transfer any inspector, gauger, or storekeeper from one distillery or other place of duty, or from one collection district to another; and require every collector within his collection district to "see that all laws and regulations relating to the collection of internal taxes are faithfully executed and complied with, * * * and to report to the Commissioner in writing any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal-revenue officer or agent of which he may obtain knowledge." (See Revised Statutes, sections 3154, 3156, 3163.)

When, therefore, the injunction orders in these cases enjoined the "appointing power" they enjoin the Secretary of the Treasury in the exercise of his discretion. In

so far as they restrain the assignments and revocations of assignments complained of they enjoin the Commissioner of Internal Revenue from the exercise of his discretion.

The statutes and the regulations and instructions of the Treasury Department (see series 7, number 7, revised February 19, 1895, pp. 35, 41) require collectors to have general charge of storekeepers and gaugers within their respective districts; to see that they perform their duties, and to recommend to the Commissioner of Internal Revenue storekeepers and gaugers for assignments to particular duty. These injunction orders seek to control the exercise of the discretion so required of the collector by statute and departmental regulations, and to compel him either to make certain recommendations and to refrain from making certain other recommendations, or from making any recommendations to the Commissioner.

It is clearly the intention of the statutes relating to the storekeepers and gaugers and the regulations of the Treasury Department in reference thereto to give to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the collector, within their respective spheres, complete control of such officers. The gaugers and storekeepers at distilleries perform a duty which affects, on the one hand, large private interests, and on the other a large portion of the public revenues. The power to assign these officers to duty and to revoke their assignments at will is a necessary power in order to prevent collusion between the storekeepers and gaugers and the owners of the distilleries. This power is constantly exercised by the Commissioner of Internal

Revenue by transferring such officers from one distillery to another, and from one collection district to another.

The officers thus transferred or relieved from duty are not thereby removed from the public service. They still remain officers of the United States, subject to new assignments to duty by the Commissioner. The record shows that the defendants, Hoult, Sutton, Staubly, and Thayer, were all officers of the United States, duly appointed and commissioned by the Secretary of the Treasury, and themselves within the classified civil service long before the assignments complained of in these cases, having been reinstated to such positions by the Secretary of the Treasury after certification of their eligibility for such reinstatement by the Civil Service Commission.

The records also show that the defendants are capable and competent to perform the duties to which they were assigned; although it is insisted that that is not a question for the court to decide, but one which is executive and political in its character, and not subject to review by the court.

The affidavits filed show that the collector was a Republican; but they also show that the Hon. W. S. Forman, the Commissioner who made the assignments and revocations of assignments complained of, was a Democrat. The affidavits of the collector (see Ruckman record, 37) show that he made his recommendations to the Commissioner of Internal Revenue for the good of the service. The affidavits of G. W. Wilson (see Ruckman record, 38), Acting Commissioner of Internal Revenue, made in the absence of Commissioner Forman, show that neither said revocations nor assignments were

made for political reasons, or because of the political or religious opinions or affiliations of either the plaintiffs or defendants, but for other reasons involving the good of the service.

There seems to have been a disposition within the last half year to test the question of the right of the courts to intervene to prevent the removal of persons within the classified service. It is believed that all the courts applied to, except in the district of West Virginia, have decided that the appointment to and removal from public office under the Government of the United States is not a ministerial act, but an executive act, and as such not subject to regulation or control by the courts.

The case of *Morgan* v. *Nunn*, collector, etc., was decided by Judge Lurton, of the United States circuit court for the middle district of Tennessee, since the decisions in these cases. The plaintiff, William C. Morgan, was a general clerk in the office of defendant D. A. Nunn, collector of internal revenue for the fifth district of Tennessee. Plaintiff filed a bill alleging that defendant was seeking, in violation of the civil-service law, to remove plaintiff from his position as general clerk, and had recommended plaintiff for the place of storekeeper and gauger for no other reason than that plaintiff was a Democrat and defendant a Republican. Demurrer to the bill was sustained. In his opinion in this case, Lurton, Judge, after reciting paragraph 3, rule 2, of the civil-service rules, and the Executive order of July 27, 1897, says:

> That these authoritative orders of the Chief Executive have been or are about to be most flagrantly

violated by the defendant, who is a subordinate executive officer, car not be and has not been denied.

But the question contested is the power of a court of equity to prevent such violation by the writ of injunction. This authority is questioned upon two grounds:

First. It is said that the civil-service rules, so far as they deny the unrestrained power of removal, are not the law of the land, but are mere Executive orders, dependent for their force upon the vigilance and earnestness of the Chief Executive in compelling his appointees to obey and regard regulations voluntarily imposed by him as a voluntary regulation by the appointing power of its otherwise unrestrained power of removal. To this contention I am constrained to yield my assent. These rules regulating the power of removal were made by the President, and may be repealed, altered, or amended at his pleasure. Prior to November 2, 1896, no such restraints existed, and if after that date they came into force it was alone by virtue of an Executive order. Law is not thus enacted, altered, or amended. Law must be an expression of a rule of action by the legislative authority.

These civil-service rules, as far as they deal with the executive right of removal—a right which is but an incident of the power of appointment—are but expressions of the will of the President, and are regulations imposed by him upon his own actions or that of heads of departments appointed by him. He can enforce them by requiring obedience to them on penalty of removal. But they do not give to the employees within the classified civil service any such tenure of office as to confer upon them a property right in the office or place.

Second. Another and equally serious objection to the power of this court to grant relief is found in

the fact that a court of equity will not by injunction restrain an executive officer from making a wrongful removal of a subordinate appointee, nor restrain the appointee, nor restrain the appointment of another. This is a general limitation upon the power of courts of equity, regardless of whether the removal is from a Federal, State, or municipal office.

In support of these positions Judge Lurton cited the following cases:

Attorney General v. *Clarendon*, 17 Vesey, 491–498.
Tappon v. *Gray*, 9 Paige, 507–509, 513.
Hagner v. *Hayberger*, 7 Watts and Serg., 104.
Updegraph v. *Crans*, 47 Penn. State, 103.
Cochran v. *McCleary*, 22 Iowa, 75.
Delehanty v. *Colvin*, 78 Ill., 237.
Beebe v. *Robinson*, 52 Ala., 66.
Moulton v. *Reid*, 54 Ala., 320.
Muhler v. *Hedikin*, 119 Ind., 481.
People v. *Canal Board*, 55 N. Y., 393.

To the same effect is the decision rendered by Pardee, circuit judge, and Newman, district judge, for the northern district of Georgia, in the case of *James M. Couper* v. *W. H. Smyth, P. M.*

In this case it was said:

The United States circuit court, in equity, is without jurisdiction to restrain or control United States post-office officials in the removal of subordinate officials or employees.

The equitable jurisdiction of the circuit courts of the United States is not enlarged by the civil-service law of January, 1883, or by any of the rules and regulations of the Civil Service Commission thereunder.

Judge Kirkpatrick, of the United States circuit court for the district of New Jersey, in rendering the decision in the case of *Page and others* v. *Moffett, Collector of Internal Revenue of the First District of New Jersey,* has rendered a decision to the same effect. In this suit the bill alleges—

> That the complainants are officers of the United States, appointed by the collector for an undefined term of service; that the office is one within the classified service, and subject to the provisions of an act entitled "An act to regulate the civil service of the United States," approved January 16, 1883; and that under the rules and regulations promulgated by the President of the United States they can not be removed therefrom except for cause and upon written charges filed, of which they should have had full notice and an opportunity to make defense. They also, in their bill, allege that no cause for their removal has been assigned, nor has any notice thereof been given to them, nor any opportunity afforded them to make defense; and they charge that the removal is made solely for political reasons, contrary to the true intent and meaning of the civil-service act and the various rules and regulations promulgated by the President of the United States under the authority thereof and section 1753 of the Revised Statutes of the United States. The bill therefore prays for an injunction restraining the collector of internal revenue from removing the complainants from office, inasmuch as such action is contrary to law.

In the decision in this case the learned judge says:

> That the persons so appointed deputies are officers of the United States need not, for the purposes of this application, be denied, nor does it seem open to question that the power of their removal rests with

the appointing power, the collector, subject to such requirements as to notice as the Commissioner of Internal Revenue may prescribe. These rules of the Commissioner of Internal Revenue, if any there be, can not have the force and effect of law, nor would a failure to comply with them justify the interference of a court of equity. (*United States* v. *Eaton*, 144 U. S., 677.) The power of removal, which by the act vested in the appointing power, subject though it be to certain limitations, can not be reviewed by an appeal to the courts. The result would be a breaking down of all discipline in every administrative department of the Government.

But the complainants insist that the office of deputy collector of internal revenue is in the "classified service" and subject to the provisions of what is called the civil-service act, and the rules and regulations promulgated by the President of the United States in respect thereto, and particularly Rule II, as amended July 27, 1897. "In the exercise of power vested in him by section 1753 of the Revised Statutes of the United States and an act to regulate and improve the civil service of the United States, approved January 16, 1883," the President of the United States, under date of November 2, 1896, promulgated certain rules for the regulation of the civil service, none of which, however, prohibited removals from office except for political or religious opinions, and on July 29, 1897, by the same authority, Rule II, on which complainants rely, was amended so as to read as follows:

"No removal shall be made from any position subject to competitive examination except for just cause filed with the head of Department or other appointing officer, and of which the accused shall have full notice and an opportunity to make defense."

It will aid us in determining the force and effect to be given to these Presidential rules and regulations to look at the power which is vested in the President by the 1753d section of the Revised Statutes and the act of January 16, 1883, known as the civil-service act, under which they were professedly issued. The former authorizes "the President to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof." It nowhere makes mention of removal. The civil-service act merely provides the machinery for fair and suitable examinations by which there may be procured a list of persons properly qualified to perform the duties of the several offices of the Government, and from which those intrusted with the duty of appointment should make their selection. Its object was to make more efficient the public service by limiting the power of appointment to a class of qualified applicants; to take away the right or privilege of any one to nominate persons whose fitness was purely political; to provide for each vacant office in the public service as it occurred some person who had, in a competitive examination, shown himself best adapted to the discharge of its duties; that, having so obtained his office, this person was not to be obliged to contribute to any political fund or render any political service, nor to be subject to removal because he failed to do so, nor because he refused to make contributions of money or other valuable thing for any political purpose.

The act saves to persons honorably discharged from the military or naval service of the United States the preferences conferred upon them in former acts, and reserves to the President any authority not inconsistent with the act conferred in section 1753

of the Revised Statutes. Except as mentioned above, the act puts no restriction upon the power of removal; it leaves the appointing power as free as before its passage to make removals at will, save only for refusal to contribute to political funds or neglect to render political service.

In prescribing regulations to promote the efficiency of the public service the President may, no doubt, promulgate rules relating to the removal of persons in office which shall be observed by his subordinates, in order that there may be a harmony of action throughout the several departments of the Government of which he is the head, and he may in various ways compel obedience to these rules by his subordinates. He may make these rules accord with his own views of the proper administration of the law. He may modify or even revoke them to-day, and he may change them from time to time at his pleasure. They can not, therefore, be regarded as laws which can only be repealed by the joint action of the legislative and executive departments of the Government.

While these rules and regulations may have the force and effect of law upon subordinate administrative officers, they can not give to officeholders vested rights in their offices; nor can a court of equity regard them as conferring property rights which it is in their province to protect.

To the same effect is the decision of Judge Jenkins in *Carr* v. *Gordon* (82 Fed. Rep., 373), and the decision of Judge Baker, in the case of *Taylor* v. *Kercheval* (82 Fed. Rep., 497).

The decision of the court below in these cases places the "rights" of the inferior officers in the classified

service above the rights, the power, and the dignity in the service of the heads of departments. The removed inferior officer, who claims that his removal was a violation of the civil-service law and rules, has only to ask an injunction and he will be kept in office until the appointing power shall have instituted and prosecuted to completion some form of legal proceeding to try his "title" to the office. Surely this is absurd and subversive of all discipline. Even if the courts will take jurisdiction to control the matter of appointments and removals, the proper proceeding would be for the person regularly appointed to enter upon the discharge of the official duties of the position and then for the removed officer to institute the proceedings.

But in these cases it is left to the superior officer hereafter to take some steps at law if he would show that he has acted within his powers and has not violated his duty. The presumption that a public officer has done his duty is ignored if not reversed. It is to be noted that the decrees below have not proceeded on the ground that the plaintiffs intend to try these questions at law; but the decrees grant these plaintiff gaugers and storekeepers an injunction and leave the Secretary of the Treasury and the Commissioner of Internal Revenue to assert their own innocence, to say nothing of their authority, if they can do so and see fit to do so, by some future proceeding to be instituted by them.

Even in a case not involving appointments or removals nor any other political matter, but a question of property rights merely, it has been decided that where an execu-

tive officer is vested by law with the exercise of discretion and is not performing a merely ministerial act, the courts can not intervene to control the exercise of that discretion in the first instance, but that the executive officer must be permitted to exercise discretion untrammeled, and the result of the exercise of that discretion must be carried into effect, although that result, after it has become effective, may then become a proper subject of judicial cognizance. (*Walker* v. *Smith*, 62 U. S., 579.)

This was a case where the Commissioner of the land office was about to issue "certain scrip" to defendant Smith, to which complainant Walker claimed to be entitled as assignee of Smith, but the court refused an application for an injunction on the ground above stated.

Therefore, even if the right exists to entertain any proceeding at the suit of an officer removed from a position within the classified civil service, the orderly course would be for the new appointee to take the place, and for the legal proceeding to "try title" to be then instituted by the removed officer, not by the appointing power.

It is earnestly contended that the decision of the court below is in contravention of the Constitution of the United States, in that it seeks to give to mere rules and regulations the force and effect of law; and the more especially as it would make such rules and regulations effective to limit not only the executive power of appointment, but the executive power of removal. This can not be done by act of Congress, and certainly not by Executive orders.

CONCLUSION.

It is respectfully submitted that the honorable circuit court erred, for the reasons given and the authorities cited above, in entertaining jurisdiction of the bills in these suits and granting the injunctions; and that the injunctions should be dissolved and the bills dismissed.

JAMES E. BOYD,
Assistant Attorney-General.
JOSEPH H. GAINES,
United States Attorney for the District of West Virginia.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

A. B. WHITE, COLLECTOR OF INTERNAL revenue, et al., appellants, *v.* H. C. BERRY.	No. 539.
SAME *v.* WILLIAM BUTLER.	No. 540.
SAME *v.* J. G. RUCKMAN.	No. 541.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

SUPPLEMENTAL BRIEF OF APPELLANTS.

As counsel for the appellants, this supplemental brief, or brief in reply, is filed to call the attention of the court more particularly to the several statutes under which

storekeepers and gaugers in the Internal-Revenue Service are appointed, how they are compensated, and the authority vested in the Commissioner of Internal Revenue, as the head of the Internal-Revenue Bureau, to assign these officers to distilleries for duty, to transfer them from one place of duty to another, and to suspend or relieve them from duty, as his judgment and discretion may direct. These officers are appointed and commissioned by the Secretary of the Treasury, and his authority to appoint is derived from the following sections of the Revised Statutes of the United States and the other acts of Congress named:

APPOINTMENTS.

SEC. 3153. There shall be appointed by the Secretary of the Treasury such number of internal-revenue storekeepers as may be necessary, who shall each receive such compensation, not exceeding *four* dollars a day, to be paid monthly by the United States, as may be determined by the Commissioner of Internal Revenue. No storekeeper shall be engaged in any other business while in the service of the United States, without the written permission of the Commissioner of Internal Revenue. Every storekeeper shall take an oath faithfully to perform the duties of his office, and shall give a bond, to be approved by the Commissioner of Internal Revenue, for the faithful discharge of his duties, in such form and for such amount as the Commissioner may prescribe.

SEC. 3156. The Secretary of the Treasury shall appoint in every collection district, where they may be necessary, one or more internal-revenue gaugers,

who shall each take an oath faithfully to perform his duties, and shall give bond, with one or more sureties, satisfactory to the Commissioner of Internal Revenue, for the faithful discharge of the duties assigned to him by law or regulations; and the penal sum of said bond shall not be less than five thousand dollars, and said bond shall be renewed or strengthened as the Commissioner of Internal Revenue shall require. The duties of every such gauger shall be performed under the supervision and direction of the collector of the district to which he may be assigned, or of the collector in charge of exports at any port of entry to which he may be assigned.

THE TWO OFFICES MAY BE COMBINED.

SEC. 3153*a*. [Extract from legislative, executive, and judicial appropriation act, Aug. 15, 1876 (19 Stat., 152)]:

That the Secretary of the Treasury may, upon the recommendation of the Commissioner of Internal Revenue, impose the duties of storekeeper and gauger upon one officer, where the amount of spirits produced at the distillery to which such officer may be assigned, is not sufficient in the judgment of the Commissioner to warrant the employment of two officers to perform the separate duties of storekeeper and gauger. The Secretary of the Treasury may issue a commission to such officer as storekeeper and gauger, but the compensation for his services as storekeeper and gauger shall be that of storekeeper only. And the said officer shall, before entering upon the discharge of such duties, give a bond in the penal sum of not less than five thousand dollars for the faithful performance of the combined duties of storekeeper and gauger.

COMPENSATION.

3153*b*. [Extract from section 2 of the legislative, executive, and judicial appropriation act, approved June 21, 1879. (21 Stat., 23.)]

Hereafter storekeepers at distilleries that mash less than sixty bushels of grain per day shall be allowed not exceeding fifty dollars per month. But when one person acts as storekeeper and gauger, his salary shall not exceed four dollars per day for the time actually employed.

3153*c*. [Extract from legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1885, approved July 7, 1884. (23 Stat., 172.)]

* * * Hereafter storekeepers, or storekeepers and gaugers, who are assigned to distilleries whose registered capacity is twenty bushels or less, shall receive two dollars per day for their services.

SEC. 3157. Gaugers shall be entitled to receive such fees, to be determined by the quantity gauged, as may be prescribed by the Commissioner of Internal Revenue; and said fees, together with their actual and necessary traveling expenses, shall be verified by their oaths, and shall be paid by the United States monthly.

SEC. 3157*b*. [Extract from legislative, executive, and judicial appropriation act of August 15, 1876. (19 Stat., 143.)]

* * * gaugers * * * shall only receive compensation when rendering actual service.

ONLY TO RECEIVE COMPENSATION WHEN RENDERING ACTUAL SERVICE.

[Extract from legislative, executive, and judicial appropriation act approved August 15, 1876. (19 Stat., 152.)]

Hereafter no storekeeper shall receive a greater compensation than four dollars per day; and said gaugers and storekeepers respectively shall only receive compensation when rendering actual service.

MAY BE ASSIGNED, TRANSFERRED, AND SUSPENDED BY THE COMMISSIONER OF INTERNAL REVENUE.

SEC. 3153*d*. *Section 64, act August 28, 1894.* That the officer holding the combined office of storekeeper and gauger, under the provisions of the legislative, executive, and judicial appropriation act, approved August fifteenth, eighteen hundred and seventy-six (Nineteenth Statutes, page one hundred and fifty-two), may be assigned by the Commissioner of Internal Revenue to perform the separate duties of a storekeeper at any distillery, or at any general or special bonded warehouse, or to perform any of the duties of a gauger under the internal-revenue laws. And the said officer, before entering upon the discharge of such separate duties, shall give a bond to be approved by the Commissioner of Internal Revenue, for the faithful discharge of his duties, in such form and for such amount as the Commissioner may prescribe.

SEC. 3154. One or more storekeepers shall be assigned by the Commissioner of Internal Revenue to every bonded or distillery warehouse established by law; and any storekeeper may be transferred * * * by the Commissioner of Internal Revenue, from one warehouse to another.

SEC. 3156*a*. *Section 65, act Aug. 28, 1894.* That internal-revenue gaugers may be assigned to duty at distilleries, rectifying houses, or wherever gauging is required to be done, and transferred from one place of duty to another, by the Commissioner of

Internal Revenue, in like manner as storekeepers and storekeepers and gaugers are now assigned and transferred.

SEC. 3163, as amended by section 2, act of March 1, 1879. (20 Stat., 327).

* * * The Commissioner may also transfer any inspector, gauger, storekeeper, or storekeeper and gauger, from one distillery, or other place of duty, or from one collection district, to another.

THE POWERS OF TRANSFER AND SUSPENSION OF STOREKEEPERS AND GAUGERS FORMERLY CONFERRED UPON SUPERVISORS OF INTERNAL REVENUE, VESTED IN THE COMMISSIONER OF INTERNAL REVENUE.

SEC. 3163*a*. [Extract from legislative, executive, and judicial appropriation act, approved August 15, 1876. (19 Stat., 152.)]

* * * The powers of transfer, and of suspension, of officers conferred upon supervisors by section 3163 of the Revised Statutes, are hereby vested in the Commissioner of Internal Revenue; and all other powers conferred, and duties imposed, by said section upon supervisors, are hereby conferred and imposed upon collectors of internal revenue within their respective districts. In case of the supervision (suspension) of a collector, under the power hereby conferred, the Commissioner of Internal Revenue shall, as soon thereafter as practicable, report the case to the President through the Secretary of the Treasury for such action as he may deem proper.

Section 3163 *of the Revised Statutes:*

Every supervisor, under the direction of the Commissioner, shall see that all laws and regulations relating to the collection of internal taxes, are faithfully executed and complied with; and shall aid in

the prevention, detection, and punishment of any frauds in relation thereto, and examine into the efficiency and conduct of all officers of internal revenue; and for such purpose he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel a compliance with such summons in the same manner as collectors may do. He shall report in writing to the Commissioner of Internal Revenue any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same.

He may, by notice in writing, suspend from duty any inspector, gauger, or storekeeper, and he may suspend any collector for fraud, or gross neglect of duty, or abuse of power. In case of the suspension of any inspector, gauger, or storekeeper, he shall immediately notify the collector of the proper district and the Commissioner of Internal Revenue, and within three days thereafter report his action and his reasons therefor, in writing, to the Commissioner. In case of the suspension of any collector, he shall immediately report his action to the Commissioner, with his reasons therefor, in writing, and the Commissioner, in all cases of suspension, shall thereupon take such action as he may deem proper. Every supervisor may also transfer any inspector, gauger, or storekeeper from one distillery, or other place of duty, or from one collection district, to another.

By c. 287 of the statutes of 1876, v. 19, p. 152, the powers of transfer and suspension conferred upon supervisors by this section were vested in the

> Commissioner of Internal Revenue, and all other powers conferred and duties imposed upon supervisors by this section were, by the statute of 1876, conferred and imposed upon collectors of internal revenue within their respective districts.

(The sections above noted by the letters *a*, *b*, *c*, and *d* are designated in this way by "Internal-Revenue Laws, 1894," compiled under direction of the Commissioner of Internal Revenue.)

By virtue of the provisions of these several statutes the court will see that, while the appointment of storekeepers and gaugers is vested by law in the Secretary of the Treasury, their assignment to duty, transfer, suspension, and relief from duty is conferred upon the Commissioner of Internal Revenue and rests in his discretion and judgment. And the contention of appellants is that such assignments, transfers, suspensions, and relief from duty being matters within the discretion and judgment of an executive officer of the Government, the courts will not interfere by injunction or otherwise with the exercise of this judgment and discretion. This principle we understand to be decided in *Gaines* v. *Thompson*, 7 Wall., 347, and reaffirmed in *Litchfield* v. *Register and Receiver*, 9 Wall., 575; *U. S.* v. *Seaman*, 58 U. S. (17 How.), 470 (cited in general brief); opinion Solicitor of the Treasury in case Sidenburg & Co., 27 Int. Revenue Record, 47.

Congress, in conferring the powers contained in the foregoing statutes upon the Commissioner of Internal Revenue, undoubtedly had in mind the interests of the

United States in securing the operation of distilleries where spirituous liquors are produced strictly in accordance with the requirements of law, in order that the product of such distilleries would be faithfully accounted for, and the taxes collected as provided by law. The distiller carries on his business under the supervision of the storekeeper, and the product of the distillery is gauged and reported by the guager, so that when stamps are required to denote the payment of internal-revenue taxes upon the product of the distillery the collector can issue according to such reports. The court will see from this relation of these officers to the distiller how important it is for the Commissioner of Internal Revenue to have entire control of the assignment, transfer, and suspension of these officers.

A storekeeper can at any time, by collusion with a distiller or by negligence in the performance of his duties, open the way for fraud upon the Government in the collection of its revenues; and the gauger can also, if he is of a mind to, make opportunity to defeat the collection of internal-revenue taxes justly due the Government. From this the court will readily observe how important it is that the Commissioner of Internal Revenue have the power to control these officers, to assign them to duty at such distilleries as he may see proper, to transfer from one place of duty to another, and to suspend or relieve from duty, if in his opinion the due administration of the law requires it. If the courts have the right to interfere in one instance with the exercise of this judgment and discretion on the part of the commissioner, they would have the right in every instance.

If the Commissioner should conclude, from evidences which are brought to him, that a storekeeper or gauger is corrupt or is negligent and that the interests of the Government are being jeopardized, and orders his suspension, would anyone contend that the court would have the right to interfere and restrain the Commissioner from making such suspension and continue the storekeeper or gauger under the assignment? Such action on the part of the courts would not only tend to demoralize and destroy the efficiency of this service, but would at once supplant the authority which is vested in an executive officer of the Government and place in its stead the right of the judiciary to control the action of the executive department.

Take, for instance, the case of a storekeeper under assignment, who becomes, from illness or otherwise (without his fault), temporarily disabled to perform his duties. Certainly the Commissioner would have the right to assign another in his stead. In order to do this, the Commissioner would have to revoke the existing assignment. This action would leave him still in office, ready for another assignment when the disability is removed.

The Commissioner, having the power of assignment of storekeepers and gaugers to duty, must necessarily have also the power to revoke assignments. Otherwise, when a distillery ceases to operate, the storekeeper and gauger assigned would continue on duty and to draw pay, notwithstanding such cessation. The power of the Commissioner is complete in another view, and that is, the authority which is vested in him to suspend a storekeeper or gauger. The Commissioner does not have to

give notice to a storekeeper on duty that he is going to suspend him. By the statute before cited the powers of transfer and of suspension of officers, conferred upon supervisors by section 3163 of the Revised Statutes, are vested in the Commissioner of Internal Revenue.

By reading section 3163 it will be observed that the supervisor of internal revenue did not have to give the suspended officer any previous notice. The suspension was by notice to him in writing, that is, he had to be notified in writing, not that he was going to be suspended, but that he was actually suspended. Now, this power, by the provision of the executive, legislative, and judicial appropriation act of August 15, 1876 (19 Stat., 152), is conferred upon the Commissioner of Internal Revenue. The notice which the supervisor was required to give by section 3163 was notice to the collector of the district and to the Commissioner of Internal Revenue that he had suspended a storekeeper or gauger, and give his reasons therefor. No such report is necessary when the suspension is by the Commissioner himself. The assignment of another storekeeper or gauger to a distillery to take the place of such officer then under assignment at the distillery does not, as is contended by counsel for complainants in these cases, remove the latter from office nor put him out of commission. Such action on the part of the Commissioner simply amounts to a suspension of the officer under assignment from actual duty and leaves him still a commissioned officer of the United States to be assigned to duty at another place whenever the Commissioner of Internal Revenue sees proper. The position of counsel for complainants in these cases is that, if the Com-

missioner of Internal Revenue has the power to revoke an assignment, it puts out of the service the storekeeper or gauger whose assignment is revoked. This is not the law, because storekeepers and gaugers are appointed and commissioned by the Secretary of the Treasury, and he alone can revoke their commissions or remove them from office. The authority of the Commissioner of Internal Revenue is simply to make or revoke assignments, and to place on duty or off duty, and not to affect the appointment or commission of the officer.

It was insisted by the counsel for the complainants in his argument that no authority of an executive officer was affected by the injunction in this case, and, as we understood it, he admitted the authority of the Commissioner of Internal Revenue, as an executive officer under the law, to make assignments of storekeepers and gaugers, to transfer them from one place of duty to another, or to suspend them from duty altogether. If this position be true, then it is as much an interference with the power of the Commissioner to enjoin the officer whom he has assigned to duty, and prevent him from taking charge of the distillery to which he is assigned, as it would be to enjoin the Commissioner himself from making the assignment. This is doing indirectly that which it is admitted could not be done directly.

The Congress evidently had in mind the fact that there would be frequent changes in the assignment, transfer, and suspension from duty of this class of officers, because it is provided in the legislative, executive, and judicial appropriation act for 1885, approved July 7, 1884 (23 Stat., 172), that the number of such officers in

commission may be as many as 15 per cent in addition to those indispensably necessary to the performance of duty. Then, the number of distilleries in operation in a district is continually changing; new ones are established, others go out of business, frequently those in operation suspend temporarily, and often seizures of distilleries are made by the Government for violations of the laws, all these things make the exact number in operation a matter of uncertainty and consequently the assignment and opportunity for assignment of storekeepers and gaugers are more or less affected. The result is that there is always a number of these officers in a district holding commissions, qualified to perform duty, who are idle, not being under assignment and, consequently, not receiving pay. These constitute a contingent which the Commissioner of Internal Revenue can draw upon any time he sees proper, in the exercise of the power which we insist is vested in him to revoke existing assignments and assign other officers in their stead. They are commissioned officers awaiting orders.

The attention of the court is also called, in considering the power of the Commissioner of Internal Revenue not only to make assignments of storekeepers and gaugers to distillery warehouses, but to revoke or change such assignments whenever he sees proper, to regulations which have been established and promulgated by the Commissioner of Internal Revenue under the authority of the internal-revenue laws. These regulations are known as series 7, No. 7, revised February 19, 1895, and are entitled, "Regulations and instructions concerning the tax on distilled spirits under the Revised Statutes

of the United States and subsequent acts." On page 35 of this series, under the head of "Assignment of storekeepers," the power and duty of the Commissioner of Internal Revenue are defined, and, among other powers set forth, is the following:

> The Commissioner of Internal Revenue is alone authorized by law to assign storekeepers to duty, revoke their assignments, and fix the rate of their compensation while on duty.

It may be of interest to the court in this connection to call attention to the several forms which have been prescribed and are in use by the Commissioner of Internal Revenue for the assignment of storekeepers, for the revocation of assignments, and for transfer from one place of duty to another. The forms are separate and are numbered, respectively, 24, 25, and 139.

Office Form No. 24.
Ed. 7 3 97 1,000.

Assignment of U. S. Storekeeper.

——. TREASURY DEPARTMENT,
OFFICE OF THE COMMMISSIONER OF
INTERNAL REVENUE,
Washington, D. C., ———, *189* .

——— ———, Esq.,
U. S. Storekeeper,
——— ———.

SIR: Having been duly appointed and qualified as internal-revenue storekeeper, you are hereby assigned for ——— service to the distillery warehouse

of ———, in the ——— district of ———, under the direction of the collector, to take effect ———.

Your compensation will be ——— dollars per day for such time as you shall be actually employed.

The statute prohibits your being engaged in any other business while in the service of the United States, without a written permission from this office.

——— ———.

Respectfully yours,

——— ———,
Commissioner.

Office Form No. 25.
Ed. 4 24 96 1,500.

Revocation of assignment of U. S. storekeeper.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF
INTERNAL REVENUE,
Washington, D. C., ———, *189—*.

——— ———, esq.,
U. S. Storekeeper,
——— ———.

SIR: Your assignment to duty for ——— service at the distillery warehouse of ———, in the ——— district of ———, is hereby revoked, to take effect ———.

You will turn over all keys, books, and papers in your possession to your successor, or to the collector, as the case may be.

Respectfully, yours,

——— ———,
Commissioner.

Office Form No. 139.
Ed. 4 24 96 2,000.

Transfer of U. S. storekeeper.

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF
INTERNAL REVENUE,
Washington, D. C., ———, *189—.*

———, Esq.,
U. S. Storekeeper,
———.

SIR: You are hereby transferred from ——— service at the distillery warehouse of ——— in the ——— district of ——— and assigned for ——— service to the distillery warehouse of ——— in the same district, under direction of the collector, to take effect ———.

Your compensation will be ——— dollars per day for such time as you shall be actually employed.

You will turn over all keys, books, and papers in your possession to your successor, or to the collector, as the case may be.

Respectfully, yours,

———,
Commissioner.

The forms prescribed and used for the assignment, revocation of assignment, and transfer of gaugers and of persons holding jointly the office of storekeeper and gauger are of the same character.

JAS. E. BOYD,
Assistant Attorney-General.
JOS. H. GAINES,
United States Attorney for the District of West Virginia.